

ARKANSAS SUPREME COURT

No. CR 09-134

CHARLES DERRICK KELLER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 16, 2009

PRO SE MOTIONS FOR RULE ON
CLERK AND TO SUPPLEMENT
RECORD [CIRCUIT COURT OF
SEBASTIAN COUNTY, FORT SMITH
DISTRICT, CR 99-825, HON. J.
MICHAEL FITZHUGH, JUDGE]

MOTION TO SUPPLEMENT
GRANTED; MOTION FOR RULE ON
CLERK DENIED.

PER CURIAM

In 2000, petitioner Charles Derrick Keller entered pleas of nolo contendere to charges of possession of hydrocodone with intent to deliver and possession of marijuana. Petitioner received suspended imposition of sentences as to both charges and a \$500 fine. On August 19, 2008, petitioner filed in the trial court a pro se motion to vacate in which he sought to withdraw his plea and vacate the judgment, which he indicated was used to enhance a federal sentence. On August 25, 2008, the trial court entered an order that denied the motion as untimely and petitioner filed his notice of appeal on September 5, 2008.

On December 4, 2008, the trial court entered an order granting an extension of time to file the appeal in this court until January 12, 2009.¹ Petitioner tendered the record on January 21, 2009, and our clerk correctly declined to lodge the record because it was tendered outside of the limit set

¹ The partial record tendered with this motion for rule on clerk includes a transcription of the plea hearing and sentencing on the charges contested in the motion to vacate.

in Arkansas Rule of Appellate Procedure--Civil 5(a), as applied through Arkansas Rule of Appellate Procedure--Criminal 4(a).

Petitioner has now filed this pro se motion for rule on clerk, in which he seeks to proceed with the appeal. In his motion to this court, petitioner avers that as a pro se litigant he is not well-versed in our procedure, that he made a number of unsuccessful attempts to lodge the record, and that he was hindered by his incarceration in keeping certain documents within his possession. Petitioner acknowledges that the circuit clerk provided the record to him on January 6, 2009, and appears to believe he acted promptly to submit the record to this court.

After filing his motion for rule on clerk, petitioner filed a motion to supplement the record with certified copies of a second motion for extension of time and an order entered on March 2, 2009, that granted a further extension of time until February 28, 2009. We grant the motion to supplement the record, but review of the order shows that the grant of a further extension was ineffective. Under subsection (b)(1) of Rule 5, the court may extend the period for filing the record by order entered before expiration of the period prescribed by a prior extension order. Even if signed prior to expiration of the period, the order is not timely if entered after the extension has expired. *Willis v. State*, 323 Ark. 41, 912 S.W.2d 430 (1996) (per curiam). The order granting a further extension was not filed prior to expiration of the initial extension on January 12, 2009, and the last date for filing of the record remained January 12, 2009.

The fact that a petitioner is proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Butcher v. State*, 345 Ark. 222, 45 S.W.3d 378 (2001) (per curiam). All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating a good cause for not doing so. *Peterson*

v. State, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam); *see also Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). Although petitioner complains of difficulties arising from his incarceration during the process of obtaining the record, he admits that he received the record from the circuit clerk sufficiently early to lodge it within the prescribed time.

The purpose of the rule setting time limitations on lodging a record is to eliminate unnecessary delay in the docketing of appeals. We have made it abundantly clear that we expect compliance with the rule so that appeals will proceed as expeditiously as possible. *Jacobs v. State*, 321 Ark. 561, 906 S.W.2d 670 (1995) (per curiam) (citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (per curiam)). Because petitioner has stated no good cause for the failure to comply with our rules and timely lodge the record, we deny his motion for rule on clerk.

Motion to supplement granted; motion for rule on clerk denied.